INTER-GOVERNMENTAL ACTION GROUP
AGAINST MONEY LAUNDERING IN WEST AFRICA

Research Report

Anti-Money Laundering and Combating the Financing of Terrorism

TYPOLOGIES STUDIES ON MONEY LAUNDERING ARISING FROM ELECTRONIC COUNTERFEITING AND INTELLECTUAL PROPERTY THEFT IN WEST AFRICA



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BACKGROUND

1. Counterfeiting and intellectual property (IP) theft have been made easier, with technological advances, making the twin scourges the most attractive and profitable predicate offences of the 21st century. Counterfeiting and IP theft are global criminal businesses that touch virtually every product. Counterfeiters and IP thieves produce and distribute not just patent or fake and substandard CDs and DVDs, but extend well to the domains of textiles and food. Today, everything from electronics, softwares, to pharmaceuticals, agrochemicals, food and beverages, auto parts, construction materials, and explosives can be counterfeited, and such products are everywhere for sale and affect every major sector, the world over.[1] In 2013, for instance, more than 3 billion pieces of substandard goods were intercepted by customs officials.[2] Electrical and electronic products in particular are among the most counterfeited products, as evidenced by the nearly 471 million pieces valued at almost $75 billion seized in 2013.[3] Additionally, nearly 3.8 million mobile phones and accessories valued at about $24.5 billion were seized. This seizure represents a significant increase from the nearly 1.8 million valued at nearly $22 billion in 2012.[4]

2. There are no plausible estimates as to how this affects West Africa or any other region in the world, but the International Chamber of Commerce reports that the phenomena "accounts for between 5-7% of world trade, worth an estimated $600 billion a year", while the International Electro-technical Commission (IEC) puts the estimate at $650 billion.[5] This is significantly higher than the estimated $322 billion generated from the global narcotics trade.[6] The Organization for Economic Development and Cooperation (OECD) estimates that $250 billion is generated from the sale of counterfeited products, with several hundreds of billions more generated from sale of domestically produced and consumed counterfeited goods as well as pirated digital products distributed via the internet.[7] The enormity of the illicit proceeds generated is such that in 2003, the Financial Action Task Force (FATF) listed counterfeiting and piracy of products as one of the twenty (20) predicate crimes for money laundering.[8]

3. Notwithstanding the lack of definitive data, however, various legitimate businesses and industries, both big and small, have consistently suffered huge losses of revenue to counterfeiting

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[1] Hopkins, DM, Kontnik, LT, Turnage, MT (2003). Counterfeiting Exposed: How to Protect Your Brand and Market Share. Hoboken, New Jersey: John Wiley & Sons; World Customs Organization (2007). Review of the Fight against Counterfeiting in 2006. Brussels: WCO.

[2] World Customs Organization, "2013 Illicit Trade Report", pp. 62.

[3] International Electro-technical Commission, "Piracy in Electrical and Electronic Products: Anti-Counterfeiting Best Practices and Strategies", pp. 2; WCO (2013), pp. 63-64. In 2012, about 3.5 million pieces valued at nearly 171 billion were seized.

[4] WCO (2013), pp.64

[5] International Chamber of Commerce –Commercial Crime Services, Counterfeiting Intelligence Bureau

[6] United Nations Office on Drugs and Crime. 2005 World Drug Report. UNODC: Austria

[7] Organization for Economic Cooperation and Development (OECD), "Magnitude of Counterfeiting and Piracy of Tangible Products: An Update", November 2009. Available at http://www.oecd.org/industry/ind/44088872.pdf. (Accessed 21 August 2014); Organization for Economic Cooperation and Development (OECD), "The Economic Impact of Counterfeiting and Piracy: Executive Summary", pp. 12, OECD Publishing, Available at http://www.oecd-ilibrary.org/science-and-technology/the-economic-impact-of-counterfeiting-and-piracy_9789264037274-en (Accessed 20 August 2014).

[8] Financial Action Task Force, Glossary: Designated Categories of Offences. Available at http://www.fatf-gafi.org/pages/glossary/d-i/

and IP theft. For instance, according to the US government, American companies lose an estimated $250 billion a year to IP theft.[9] The phenomena thus pose a grave threat to economic growth and development by way of depriving manufactures as well as trademark, patent and copyright owners of significant business profits. Loss of profits discourages innovation and much-need foreign investments, especially in developing countries, thereby further retarding growth.[10] Complicating the threats to growth are the potentially devastating effects of counterfeited products on public health and safety, ranging from mild to life-threatening. For instance, unsuspecting consumers jeopardize not only their properties, but also their health and lives by using counterfeited electronics and electrical supplies, auto spare parts, among others. Of equal importance are the serious environmental damages that could be inflicted by the use of these products. Also, counterfeiting and IP theft impose high law enforcement costs on governments and deprive them of much-needed revenue through related crimes such as tax and customs evasion.[11] Furthermore, the enormous proceeds accruing to counterfeiters could enable them to corrupt and undermine key public institutions such as law enforcement and the judiciary, thereby enabling them to carry out their criminal activities with considerable ease.

4. According to the World Customs Organization (WCO), most counterfeited products can be traced to China. Specifically, data collected by the WCO from 121 countries in 2008 shows that 65% of consignments of counterfeited goods detected had departed from mainland China. This represents about 241 million pieces of counterfeited goods globally. In 2013, China again emerged as the primary departure country for counterfeit goods, accounting for almost 50% of the total number of cases.[12] In the same year, Nigeria exported nearly 1.9 million counterfeited goods. This represents a dramatic increase from the 161,000 it exported in 2012.[13] There are indications that counterfeit products are also produced domestically.

5. Significantly, there is growing evidence that transnational organized criminal networks involved in drug trafficking, human trafficking, money laundering, among others, have diversified into the production and distribution of counterfeit goods.[14] Reports by the United Nations Office on Drugs and Crime (UNODC) have, for instance, pointed to strategic and operational links between drug trafficking and counterfeiting. Also, according to a report by the Economic Committee of the North Atlantic Treaty Organization (NATO) Parliamentary Assembly, West Africa, and particularly Nigerian organized crime groups have engaged in large-scale counterfeiting operations.[15] This can be attributed to the complementary source of income offered by trafficking of counterfeit products. As noted by Europol and the OECD, trafficking of

[9] Stopfakes.gov "How Serious a Problem is Counterfeiting and Piracy"? Available at http://www.stopfakes.gov/learn-about-ip/ip/how-serious-problem-counterfeiting-and-piracy

[10] Companies become reluctant to manufacture in countries where counterfeiting and IP theft are prevalent. These countries are deprived of much-needed foreign know-how, which in the long run, slows economic development.

[11] The IEC notes that G-20 economies lose approximately $90 billion in tax revenues and higher welfare spending.

[12] WCO (2013), pp. 66

[13] Ibid

[14] UNICRI, "Illicit Trafficking of Counterfeit Goods, A Global Spread, A Global Threat", pp.118, 2008.

[15] Zijlstra Kees, Economic Committee, North Atlantic Treaty Organization (NATO) Parliamentary Assembly, "Transnational Organized Crime –An Escalating Threat to the Global Market", para. 26 (1998). Available at http://www.nato-pa.int/archivedpub/comrep/1998/ar278ec-e.asp (Accessed 21 August 2014).

counterfeit products is often more profitable than other criminal activities.[16] However, existing evidence do not present a clear picture as to whether or not such group are majorly involved in the production and distribution of electrical and electronic products.

6. In distributing their products, counterfeiters and their accomplices use every conceivable concealment scheme to evade detection by customs and law enforcement officials. Among the popular ways of deceiving customs are stashing counterfeit goods deep in containers or behind legitimate goods, and making false import/export declarations. For instance, a smuggling network imported more than 100 million counterfeit cigarettes by declaring them as toys and plastic parts on shipping documents.[17] Increasingly, however, counterfeiters have also resorted to importing small parts of counterfeit items separately and assembling them domestically. For instance, multiple electronic parts are often imported with manuals for assembling particular products.

7. A multiplicity of factors underpins prevalence of counterfeiting and IP theft. Prominent among these factors is rapid globalization characterized by liberalization of trade, transportation, and finance, and sustained technological advances. Despite having spurred immense growth and prosperity, these factors have made it easier for criminals to commit IP theft and distribute counterfeited products across borders. Specifically, counterfeit products can be manufactured in one country, assembled in another, transported through a third country and eventually sold in a fourth country. The availability of the internet, for instance, has enabled criminals and criminal groups to illegally download music and video files and sell them for profit. This is compounded by the lack of adequate legal frameworks against counterfeiting, as evidenced by the inadequacy of legal penalties. Indeed, many jurisdictions have insufficient or weak laws against counterfeiting and IP theft. This is further exacerbated by national authorities placing the fight against counterfeiting and IP theft at the bottom of law enforcement priorities. As such, poor enforcement of IP rights, makes the phenomena a high-return, low-risk activity. Furthermore, there is considerable social tolerance of counterfeiting and IP theft as compared to other crimes. Criminal protection against IP rights are largely deemed as protection of corporate and private interests. Hence, violation of such rights can be remedied by civil and administrative measures. Also, there is high demands, especially in developing countries, for cheap products and the affordability of counterfeit products as compared to genuine ones. At the same time, international cooperation has not kept pace with such globalization.

8. Nonetheless, the seriousness of the threats posed by counterfeiting and IP theft have provoked action by the international community. This is evidenced by the establishment of the World Intellectual Property Organization (WIPO) in 1967 with the mandate to, among others, "…promote the protection of intellectual property throughout the world."[18] Long before the establishment of the WIPO was the adoption of the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention), which sets out exclusive rights for copyright owners.[19]

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[16] Europol, "OCTA 2011: EU Organized Crime Threat Assessment", p. 48, 2011. Available at https://www.europol.europa.eu/sites/default/files/publications/octa2011.pdf (Accessed 21 August 2014); (OECD), "The Economic Impact of Counterfeiting and Piracy: Executive Summary", pp. 12

[17] UNODC, 'Results of a Pilot Survey'

[18] See Article 3(i) Convention Establishing the World Intellectual Property Organization. Available at http://www.wipo.int/treaties/en/text.jsp?file_id=283854#P68_3059. (Accessed 25 August 2014)

[19] See Articles 8,9,11, 12, and 14 of the Berne Convention for the Protection of Literary Works and Artistic Works. Available at http://www.wipo.int/treaties/en/text.jsp?file_id=283698. (Accessed 25 August 2014).

Subsequent to the WIPO is the adoption of a number of international instruments, which build on the Berne Convention and expands the framework for addressing counterfeiting and IP theft. Prominent among them are the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), the World Intellectual Property Organization Copyright Treaty (WIPO Copyright Treaty), the Patent Law Treaty, and the Anti-Counterfeiting Agreement (ACTA). The TRIPS Agreement, negotiated and adopted under the auspices of the World Trade Organization (WTO), took effect in 1995 and covers various forms of IP rights, including copyrights, patents, trademarks, and geographical indications.[20] The Agreement spells out minimum criteria by which signatory countries should grant monopoly over any type of IP and the duration of such monopoly.[21] It also contains provisions, including on civil and administrative procedures that provide a framework for enforcing IP rights.[22]

9. The WIPO Copyright Treaty, which took effect in 2002, was adopted in response to technological advances which enabled faster and easier duplication of copyrighted materials. The Treaty thus extends international copyright law to the digital domain. For instance, Article 4 extends copyright protection to computer programs as among the list of "literary works" under Article 2 of the Berne Convention.[23] Importantly, Article 14(2) requires signatory countries to "…ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered in this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements." Also, the ACTA, adopted in 2010, aims to strengthen the international legal framework for combating commercial counterfeiting and IP theft. It contains elaborate provisions for improving international cooperation against the phenomena and promoting effective enforcement of IP rights. Furthermore, to the extent that counterfeiting and IP theft are forms of transnational organized crime, the United Nations Convention against Transnational Organized Crime (UNTOC), adopted in 2000, requires signatory countries to criminalize it.[24]

10. In addition to the adoption of international legal instruments, there are a number of international initiatives designed to help countries combat counterfeiting and IP theft. In 2003, for example, the UNODC and the WCO jointly launched the Global Container Program to help national governments to "…create sustainable enforcement structures in selected seaports in order to minimize the risk of shipping containers being exploited for…transnational organized crime and other forms of black market activity."[25] The Program, which initially focused on assisting countries to intercept narcotics trafficking in shipping container, has been extended to tackling counterfeited goods, thereby leading to seizure of nearly 500 containers of fraudulent goods and

[20] See Sections 1, 2, and 3. World Trade Organization, Part II: Standards Concerning the Availability, Scope, and Use of Intellectual Property Rights". Available at http://www.wto.int/english/docs_e/legal_e/27-trips_04_e.htm. (Accessed 25 August 2014)
[21] See, for instance, Article 12
[22] Articles 42 through 49.
[23] Although the Berne Convention does not list computer programs as among literary works, it notes that literary works include "every production in the literary, scientific, and artistic domain, whatever may be the mode or form of its expression."
[24] To be sure, the UNTOC does not specifically mention counterfeiting and IP theft
[25] UNODC, "The UNODC-WCO Container Control Program (CCP). Available at https://www.unodc.org/unodc/en/drug-trafficking/horizontal-initiatives.html. (Accessed 25 August 2014)

contrabands between 2003 and 2012.[26] In 2004, the WIPO, the WCO, the International Criminal Police Organization (INTERPOL), International Trademark Association (INTA), and the International Chamber of Commerce's Business Action to Stop Counterfeiting and Piracy (ICC/BASCAP), launched the Global Congress on Combating Counterfeiting and Piracy with the aim of pushing counterfeiting and related issues on the international agenda, promoting collective action against the phenomena, and promoting investment in protecting IP rights. Also, in 2014, the UNODC launched "Counterfeit: Don't Buy into Organized Crime", an international anti-counterfeiting campaign aimed at countering the illicit trafficking of counterfeit goods by informing consumers that buying such goods could be funding organized criminal groups.[27]

11. Also, a number of non-governmental organizations (NGOs) have emerged in response to the phenomena. Prominent among such organizations are the International Trademark Association (INTA), International Intellectual Property Alliance (IIPA), the Business Software Alliance, and the International Anti-Counterfeiting Coalition. The IIPA, established in 1984, is a coalition of trade associations representing more than 3,000 American companies that produce and distribute copyright-protected materials. It seeks to "improve international protection and enforcement of copyrighted materials"[28] In doing so, the IPPA, among others, submits reports to the United States Trade Representative as contribution to the US governments' "Special 301" review of the effects of policies and practices by foreign governments on IP rights protection for American companies that rely on such protection.[29] The BSA, established in 1988, works to prevent copyright infringements of software produced by its members.

RATIONALE OF THE STUDY

12. Over the last decade, until 2013, West Africa made significant advances in terms of economic growth and development. Indeed, the economies of some countries in the region were among the fastest growing in the world, even in the context of the global economic downturn. In Ghana and Cote d'Ivoire, for instance, average growth in 2013 and 2014 is expected to exceed 8%

[26] UN Drugs and Crime Office, World Customs Organization Make a Dent in Counterfeit Goods and Drug Shipments. Available at http://www.unodc.org/unodc/en/press/releases/2012/June/un-drugs-and-crime-office-world-customs-organization-make-a-dent-on-counterfeit-goods-and-drug-shipments.html. (Accessed 25 August 2014). Also, between January and November 2013, about one-third of containers stopped for inspected under the CCPP involved counterfeit goods. See UNODC "The Illicit Trafficking of Counterfeit Goods and Transnational Organized Crime" Available at http://www.unodc.org/documents/counterfeit/FocusSheet/Counterfeit_focussheet_EN_HIRES.pdf. (Accessed 25 August 2014).

[27] UNDOC-WCO Global Container Control Program in the Fight against Trafficking of Counterfeit Goods. Available at https://www.unodc.org/ropan/en/IndexArticles/CCP/unodc-wco-global-container-control-programme-in-the-fight-against-the-trafficking-of-counterfeit-goods.html. (Accessed 25 August 2014). Evidence from the CCP in Latin America and the Caribbean revealed the extent of trafficking of counterfeit goods in the region. Counterfeit versions of renowned brands such as Sony, Nokia, and Samsung were seized.

[28] See Factsheet of the International Intellectual Property Alliance (IIPA) at http://www.iipa.com/aboutiipa.html. (Accessed 26 August 2014). Member association of the IIPA are the Association of American Publishers, Entertainment Software Association, Independent Film & Television Alliance, Motion Picture Association of America, National Music Publishers' Association, and the Recording Industry Associate

[29] Ibid, Factsheet. For details on the Special 301 review, see Office of the United States Trade Representative, "Special 301". Available at http://www.ustr.gov/trade-topics/intellectual-property/Special-301. (Accessed 26 August 2014).

and 9% respectively.[30] Nigeria, the region's economic powerhouse, was expected to grow between 6.7% and 7.3% in 2013 and 2014 respectively.[31] Growth in other countries, with the exception of Benin, Cabo Verde, and Guinea-Bissau, was expected to exceed 5% in same period.[32] At the same time, West Africa continues to make advances in democracy, good governance, peace and security.[33]

13. In spite of these encouraging trends, counterfeiting and IP theft, particularly piracy of electronic products, in West Africa have become more pronounced over the years. Notwithstanding the lack of definitive data, the two phenomena, generate substantial illicit proceeds in the region and seriously undermines the economic potential of its countries. In all the capitals of countries in West Africa and in major cities and towns, pirated electronic materials are commonly sold on the streets, especially on major roads with heavy traffic. This is generally tolerated by the law enforcement officials, even where there are laws that prohibit the production, distribution and sale of fake or patented products. For example, it is estimated that 80% of international music CDs available in Nigeria is pirated, and more so with videos. Also, 40% of CDs and other related products from the Nigeria music industry are copied, pirated or sold illegally.[34] Frequent seizure and destruction of counterfeit goods by law enforcement officials exemplify the prevalence of these crimes in the region. For instance, in July 2013, an anti-piracy operation carried out by operatives of the Nigerian Copyright Commission (NCC) at the Alaba International Market in Lagos resulted in seizure of 3,750 units of pirated broadcast decoders worth over 780 million naira.

14. In 2013, Operation Bayela, a 10-day operation led by the WCO which involved 23 African countries including eight in West Africa (Benin, Cote d'Ivoire, Ghana, Guinea, Liberia, Nigeria, Senegal, and Togo), led to the seizure of more than 1.1 billion pieces of counterfeit products.[35] Nearly 456 million of pieces seized, representing about 40 percent, were electronic appliances. More than 148 million pieces were seized in Togo alone, nearly 9 million in Benin, and more than 6 million in Nigeria.[36] Similar operations are often led or coordinated by INTERPOL. Similarly, Senegal has witnessed significant increase in counterfeiting in recent year with its capital, Dakar, being a major center of the phenomena. Duplication of CDs and DVDs, piracy of TV service bouquets, processing and trafficking in counterfeit works of art and music, and exploitation of video clubs without authorization are among the types of counterfeiting prevalent in the country.[37]

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[30] AfDB, OECD, UNDP, UN Economic Commission for Africa. African Economic Outlook 2013 – Regional Edition: Western Africa. P. 4-5

[31] Ibid

[32] Ibid

[33] Peace has been restored in Liberia, Sierra Leone, and Cote d'Ivoire after a protracted period of conflict. Peace in Sierra Leone in particular is evidenced by two successive multiparty elections and peaceful alternation of power between the two main political parties – the Sierra Leone Peoples Party (SLPP) and the All Peoples Congress (APC).

[34] See NigeriaFilms.com, 'Robber of Intellectual Property', 27 August 2008. Available at http://www.nigeriafilms.com/content.asp?ContentTypeID=1&contentid=3032. These figures were reported by Karen Burress, a official from the US Department of Commerce, at a conference organized the US Embassy in Nigeria and sponsored by the Business Software Alliance (BSA).

[35] WCO (2013), pp. 70.

[36] WCO (2013), pp. 64

[37] Ismaila Diallo "A Profile Crime Markets in Dakar", Institute for Security Studies Paper 264

15. The extent of counterfeiting and IP theft in West Africa is underpinned by the existence of well-established crime syndicates, high demand for cheap and sub-standard products, and the absence of strong frameworks for the protection of IP rights. The non-protection of IP rights is especially significant. In Ghana, for instance, it is estimated that the music industry is deprived of $53 million.

16. The substantial illicit proceeds generated through electronic counterfeiting and IP theft present a serious challenge to anti-money laundering (AML) efforts in West Africa. Specifically, these profits provide criminal groups, especially those involved in other more serious criminal activities, with not only complementary income but also more money to invest in serious crime. The proceeds generated could be used to expand the production, importation, or trafficking of counterfeit goods, which are then fed into legitimate supply chains in order to obtain clean money. Hence, in view of the ML risks associated with electronic counterfeiting and IP theft, and considering the mandate of GIABA to support its member States in the fight against ML, there is need for a deeper understanding of these crimes in terms of their extent and manifestations in West Africa. Such understanding will enable GIABA and its partners to develop and implement appropriate policies and operational measures against ML arising from electronic counterfeiting and IP theft in the region.

OBJECTIVES OF THE STUDY

17. Accordingly, the study seeks to determine the techniques, methods, patterns, and emerging trends related to electronic counterfeiting and IP theft in West Africa. Specifically, it seeks to:

- Provide a deeper knowledge and understanding of the extent of electronic counterfeiting and IP theft in West Africa;
- Examine existing legal frameworks and institutional measures for combating electronic counterfeiting, IP theft and related ML in GIABA member States;
- Provide deeper understanding of the manifestations of the two phenomena through case studies by identifying the types of people involved and the techniques and methods they use;
- Examine existing frameworks for international cooperation against electronic counterfeiting and IP theft in GIABA MS;
- Determine the factors that undermine efforts against electronic counterfeiting, IP theft and related ML in GIABA MS; and
- Provide policy and operational recommendations for actions against electronic counterfeiting, IP theft and related ML.

RESEARCH QUESTIONS

18. In order to achieve the above-stated objectives, the following research questions have been formulated to guide the project:

RESEARCH QUESTIONNS TO BE ADDRESSED
1. What are the types of electronic products most counterfeited, and IPs most stolen, for commercial purposes in GIABA member States? 2. What are the sources of counterfeited electronic products and stolen IPs in GIABA member States? How are they produced, distributed, and sold? What type of people are involved in production, distribution, and sale of counterfeited electronic products? 3. What is the quantum of illicit proceeds generated from electronic counterfeiting and IP theft in GIABA member States? How are these proceeds laundered? 4. Do GIABA member States have legal and institutional frameworks in place for combating electronic counterfeiting and intellectual property (IP) theft? 5. Do GIABA member States have cooperative frameworks in place for international cooperation against electronic counterfeiting and IP theft? 6. What are the factors that undermine efforts to combat electronic counterfeiting and IP theft and related money laundering in GIABA member States? 7. What policy and operational measures are required to effectively fight against electronic counterfeiting and IP theft and related money laundering in GIABA member States?

RESEARCH PROCESS, DESIGN AND METHODOLOGY

19. To obtain relevant and comprehensive information that informs the study, the GIABA Risks, Trends and methods Group (RTMG), supported by the Secretariat commissioned Four (4) experts, one each from Cote d'Ivoire, Ghana, Nigeria, and Senegal, to carry out background studies on electronic counterfeiting and IP theft in their respective countries over a period of two months. In doing so, the experts reviewed existing literature in their respective countries and administered questionnaires to relevant authorities, particularly law enforcement and judicial personnel, as well as government officials. The experts also conducted structured interviews based on confidentiality with various interlocutors to confirm the validity or otherwise of the responses to the questionnaires. The selection of aforementioned member States is based on the prevalence of the phenomena compared with other member States. Nigeria is of particular importance, not least because it has become known as a major center of counterfeiting in West Africa.

20. A Typologies Workshop on Money Laundering Arising from Counterfeiting and Intellectual Property (IP) Theft of Electronic Products in West Africa was organized in Saly, Senegal from 12th to 15th October 2015 to review progress made on the project and also to enable the experts to present cases that illustrate the methods, techniques, emerging trends, and the complexities of ML arising from counterfeiting and IP theft of electronic products in West Africa.

The workshop was attended by experts and practitioners from member States, who also made presentations and reported cases. The workshop evaluated the cases and selected some of them for analysis in the project report. Furthermore, the workshop reviewed the outcome of the literature for the project and agreed on the structure for the project report.

21. Section two presents a summary of the literature reviewed and situational analysis of the two phenomena in West Africa. Section three reports on the typologies, while section four concludes with summary of findings and recommendations.

SUMMARY REVIEW OF LITERATURE AND SITUATION ANALYSIS IN WEST AFRICA

REVIEW OF LITERATURE

Definition

22. The literature on counterfeiting and IP theft is fraught with a series of issues. First, there is no consensus on basic concepts and the definitions of the phenomenon. Thus, although counterfeiting is a widely used word, its usage in particular contexts has not been defined. National definitions, especially in relation to counterfeit drugs and medicines, vary considerably.[38] Nonetheless, counterfeiting has been defined generally in relation to infringement on IP rights, especially trademarks. The WTO defines it as "unauthorized representation of a registered trademark carried on goods identical or similar to goods for which trademark is registered, with a view to deceiving the purchaser into believing that he/she is buying the original goods."[39] This is similar to the definition provided in the WTO TRIPS Agreement, which defines "counterfeit trademark goods" as "any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes on the rights of the owner of the trademark in question under the law of the country of importation."[40] The OECD also a definition that highlight violation of trademarks.[41] However, there are often terminological differences in the description of counterfeiting. For instance, counterfeiting is often used interchangeably with piracy – the unauthorized use of copyright-protected materials such as music, movies, books, and computer software.

Model for Understanding the Phenomenon

23. Nor is there a comprehensive and universally accepted framework for understanding the manifestations of counterfeiting and IP theft. There is thus a lack of precise and sufficient understanding of the production, distribution, and sale aspects of the phenomena. To be sure, different conceptual and empirical models have been used to explore the production and consumption aspects, with some scholars providing theoretical and practical explanations for the why counterfeiting is perpetrated. These explanations attribute counterfeiting to a complex interplay of demand and supply factors embedded in particular economic, institutional, and socio-cultural contexts. Scholars focusing on the demand side have explored consumer behavior in relation to purchase of counterfeit products. Specifically, consumer behavior towards counterfeiting is a function of product attributes – price, appearance, perceived content,

[38] This is based on a survey conducted by the WHO on national legislations on 'counterfeit medicines'. See WHO (2010). Preliminary Draft Survey on National Legislation on "Counterfeit Medicines". Available at http://www.who.int/medicines/services/counterfeit/WHO_ACM_Report.pdf. (Accessed 27 August 2014).

[39] World Trade Organization (2011). Glossary: Counterfeit Definition. Available at http://www.wto.org/english/thewto_e/glossary_e/counterfeit_e.htm. (Accessed 27 August 2014)

[40] See Footnote 14 to Article 51 of TRIPS Agreement

[41] OECD (2007). The Economic Impact of Counterfeiting and Piracy, Part I: Overall Assessment (Draft); FDA (2004). Combating Counterfeit Drugs

functionality, purpose, etc. (Bloch, Bush and Campbell 1993; Wee, Ta and Cheok 1995; Yoo and Lee 2009);[42] socio-demographic status –income, education, age, and gender (Solomon and O'Brien 1991, Bloch et al 1993, Wee et al 1995, Prendergast et al 2002)[43]; and attitudes – morality and lawfulness, social pressure, materialism (Yoo and Lee 2004; 2009, Furnham and Valgeirsson 2007, and Cordell et al. 1996); and health and safety awareness. Supply-side arguments highlight the motives of counterfeiters and their appendages, how legitimate supply chains become infected with counterfeit products, and anti-counterfeiting strategies. Three elements influencing production and distribution are particularly highlighted: i) the nature of the market in terms of size and profitability, ii) protective measures by manufacturers and brand owners; and iii) technology and logistics. Specifically, there are arguments that the products that have large markets attract counterfeiters because of the potential for high profits (UNICRI 2008:33). Also, existence of technology that could make counterfeit products have similar physical attributes and appear to have the similar quality and durability also attracts counterfeiters (Penz and Stottinger 2008). Furthermore, the OECD attributes counterfeiting to weak legal and enforcement frameworks, low risks and high returns, large markets with strong brands, moderate investments and technical requirements, and among others.[44]

Amount/Value – Measurement

24. Furthermore, although a strand of the literature is focused on the economic impact of counterfeiting, there is no consensus on the magnitude of phenomenon, particularly in terms of its economic value and the amounts generated in illicit proceeds, not least because of the variations and other difficulties encountered in directly measuring it across different countries and industries. In 2008, the global economic value was estimated to be around $650 billion a year, with products traded internationally accounting for $285 billion to $360 billion, domestic production and consumption accounting for between $140 billion and $215 billion, and digitally pirated movies, music and software accounting for between $30 billion and $75 billion a year (Frontier Economics and BASCAP 2011).[45] This global value is higher than the $500 billion estimated by the Government of the United States (US Customs and Border Protection 2008).[46] The OECD also reported that about $200 billion worth of counterfeit or pirated products could have been traded internationally in 2005. This figure was increased to $250 billion in 2009.[47] In 2012, the International Anti-Counterfeiting Coalition (IACC) put the estimate at $600 billion a year and

[42] Bloch, P.H., Bush, R.F, and Campbell, L (1993). Consumer "Accomplices" in Product Counterfeiting, Journal of Consumer Marketing, Vol. 10, No.4, pp.27-36; Wee, C. H., S. J. Ta, and K. H. Cheok (1995). Non-Price Determinants of Intention to Purchase Counterfeit Goods: An exploratory study. International Marketing Review, Vol. 12, No. 6, pp. 19-46; Yoo, B., and S. H. Lee. 2009. Buy Genuine Luxury Fashion Products or Counterfeits? Advances in Consumer Research, Vol. 36, pp. 280-286.

[43] Prendergast, G., L. H. Chuen, and I. Phau. 2002. Understanding Consumer Demand for Non-Deceptive Pirated Brands. Marketing Intelligence and Planning, Vol. 20, No. 7, pp. 405- 416; Solomon, S. L., and J. A. O'Brien. 1991. The effect of demographic factors on attitudes toward software piracy. In Ethical Issues in Information Systems, ed. R. DeJoie, G. Fowler, and D. Paradice, 68-181. Southwestern Publishing. Solomon and O'Brien note that a consumer's age, educational background, and economic status influences his or her attitude towards software piracy.

[44] OECD (2008). Economic Impact of Counterfeiting and Piracy. OECD Publications: Paris

[45]Frontier Economics and BASCAP (2011:5). Estimating the Global Economic and Social Impacts of Counterfeiting and Piracy: An Executive Summary Commissioned by Business Action to Stop Counterfeiting and Piracy (BASCAP).

[46] US Customs and Border Protection 2008.

[47] Organization for Economic Cooperation and Development (OECD), "Magnitude of Counterfeiting and Piracy of Tangible Products: An Update", November 2009. Available at http://www.oecd.org/industry/ind/44088872.pdf.

noted that counterfeiting had grown over 10,000% over the previous two decades partly because of consumer demand (Chaudhry and Zimmerman 2013).[48] Even so, there is no breakdown of the value of counterfeiting of the various categories of products. Nor is there a clear breakdown of the value of counterfeiting in different regions of world, albeit the estimated $125 billion that G-20 governments and consumers lose every year.[49]

Effects

25. Having failed to reach a consensus on the scale of counterfeiting, the literature devotes considerable attention to the broader impacts of the phenomenon. Perhaps the most succinct summary of the impact is provided by the OECD study on counterfeiting and piracy, which notes that they "…have broad economy-wide effects on trade, foreign investment, employment, innovation, criminality and the environment. Concerning the microeconomic effects, the sales volume, prices and costs of rights holders are impacted, as are investment, royalties and brand value. For consumers, counterfeit and pirated products may offer cheap alternatives to genuine goods but are usually of inferior quality. For certain types of infringing goods, the health and safety of consumers may be put at significant risk. With respect to governments, counterfeiting and piracy have effects on tax revenues, government expenditures, and, when corruption takes place, the effectiveness of public institutions."[50]

SITUATION ANALYSIS OF COUNTERFEITING AND IP THEFT

OVERVIEW OF COUNTERFEITING AND IP THEFT IN WEST AFRICA

26. West Africa, a region with huge informal sector is a destination for counterfeit products and Nigeria carries the lion share, and double as a regional hub for IP theft and other copyright infringements accounting for about 80% of the pirated international music CDs of the 7% attributed to piracy in global trade[51]. Nigeria, a country known for its thriving film industry and rated as the world's 3rd largest film industry with an estimated annual revenue of $300 million, is one of such economies that has been bedeviled with products/services counterfeiting and intellectual property theft. The country is home to a rich and dynamic creative industry with music, publishing, computer software and media broadcasting as components edged with enormous potential for growth as statistics indicate that the Nation's copy right base industry, has the prospect of contributing between 5 -10% of its National Revenue (NTA 360, 2015). Statistics from the Nigerian Customs Service (NCS) indicates that the most predominant types of counterfeited electronic products in the country are mobile phones, computers and television sets which are imported into Nigeria from specific Asian countries.

[48] Quoted in Chaudhry, Peggy E. and Zimmerman, Alan (2013). Protecting Your Intellectual Property Rights: Understanding the Role of Management, Governments, Consumers and Pirates. New York, Heidelberg, and London: Springer. pp. 10

[49] Frontier Economics and BASCAP (2011)

[50] OECD, "Economic Impact of Counterfeiting and Piracy", pp. 133

51 http://www.nigeriafilms.com/news/3032/7/robber-of-intellectual-property.html

27. The alarming rate of copy right infringement with its attendant consequences on loss of jobs and Government revenue in taxes, undermines the growth of the creative industry in West Africa. The twin phenomena of counterfeiting and IPT are therefore major global concern for the right owners and Governments at large, particularly in major cities like Lagos, Abidjan, Accra, Dakar, Cotonou and Conakry, considered to be the commercial centres where the scourges continue to thrive despite the effort of the investigative and enforcement agencies. Stemming this tide of IPT without necessarily going into the debate of what constitutes counterfeiting or piracy should therefore be the focus of regional Governments for action. More so as to boost the confidence and sustain the initiative of the right owners who invest enormous energy, time and money into producing sound recordings, films, books and computer programs.

28. According to Business Software Alliance (BSA) report, in sub-Saharan Africa, Nigeria was rated amongst the top 3 countries involved in piracy activities and accounts for 83% of the volume. The report revealed that software piracy on personal computers (PC) in Nigeria has risen to 1% from 2007 to 2008 and that industry losses due to software piracy in Nigeria rose to USD132 million in 2008.

29. Majority of counterfeited electronic products and IP include mobile phones, power banks, films, sound recordings, video games, computer softwares, literary works to name but a few. Overtime, the counterfeiting industry has grown in sophistication as the criminals have evolved in producing near replicas to meet the market demands. While the counterfeiters are evolving in their practice, there is a corresponding threat to innovation as original equipment manufacturers (OEM) and IP owners are denied the benefits of their creativity.

30. Nigeria is said to be the largest market in Africa for counterfeit and pirated products with the entertainment industry being one of Africa's biggest industries as primary target. The sale of cheap and sub-standard goods domestically pirated that have found a common place in the markets. This is evident in the activities of local and other West African traders dealing in counterfeit of various types of creative works, such as software, music and film, amongst others, distributed and sold daily in major city markets and streets at prices lower than that originally retailed by the rights owners. Lagos, a zone considered to be a hot bed for the creative industry and the commercial center of the country locates some of the most significant markets dealing in electronically pirated products. The popular Alaba International Market is the major hub of counterfeited and pirated electronic products in Nigeria. It is considered to be the largest electronic piracy hot bed in Nigeria followed by the computer village in Ikeja and book market in Ajegunle all located in Lagos. Generally, the counterfeit goods are sold under a trademark that is identical to or significantly indistinct from the brand owner's trademark, while manufacturers are illegally reproducing replicas of known brand names and designs on counterfeit packages and labels. Industry reports contend that IP infringers from outside West Africa appear increasingly active in using Nigeria as a base for the production of pirated goods[52]. Unfortunately, those who indulge in this illicit business are the pirates and infringers who make billions of Naira at the detriment of the rightful owners and producers of audio/visio property that have committed all their resources (time, money & energy) to creativity.

[52] BASCAP: Promoting and protecting intellectual property in Nigeria, July, 2015

31. The region has thus become a target destination and significant transit route for counterfeit and pirated electronic products as well as a hub for rights infringements. Several factors have, therefore, contributed to the wide-scale proliferation of counterfeit and pirated products throughout West Africa[53]. Such factors which may include the disproportionate size of its informal economy, outdated legislation, weak enforcement mechanisms, including a lack of national policy on combating counterfeiting and piracy with corruption as the most significant enabler of the menace particularly at entry and exit points of the country. The porous borders and ports provide perfect grounds for dumping of counterfeit products.

FACTORS UNDERPINNING COUNTERFEITING AND IP THEFT

32. There are several factors that underpin the counterfeiting and IP theft in West Africa. A brief analysis of some of these factors is essential in developing a better understanding of how counterfeiting and infringement on trademarks of copyright owners of electronic products are conducted:

Political, Institutional & Governance Factors

33. There are political, institutional and governance issues that underpin the circulation of counterfeiting of electronic products and IP theft in West Africa. Analysis of the political, institutional and governance landscape suggests legislative inadequacy in addressing counterfeiting and IP related issues. Even with the existing legislations, enforcement by state institutions including the law enforcement and the Copyright Office has been extremely weak. Punishment for EC and IP breaches is extremely lenient to prevent reoccurrence and deter other offenders. The state institutions such as the Copyright Offices, the Police, Standard Bureaus, Revenue Authorities, among others, who are tasked to enforce specific anti-IP theft actions lack the resources and skills to enforce EC and IP related breaches.

34. Political interference has also been identified as a major issue undermining enforcement of anti-counterfeiting and IP issues. In some cases, politicians including local government officials exert political pressure on enforcement officials to release suspects after they have been arrested for IP related offences. Bribery and corruption involving state enforcement officials has also been cited as a significant factor that weakens the effectiveness of public institutions to enforce anti EC and IP measures.

Economic Factors & Geographical Considerations

35. Unemployment among youths has been identified as a major economic factor that is driving illicit trade in electronic products. Youth employment is considerably higher in urban areas and youth population centres are heavily concentrated in the major counterfeiting hub, where counterfeiting and IP theft are very prevalent.

36. Graduate unemployment in the region is on a rapid increase. There are fewer jobs for the growing number of students who graduate from both public sector and private tertiary institutions.

[53] BASCAP: Promoting and protecting intellectual property in Nigeria, July, 2015

Because of these economic factors, predicate offences like piracy and counterfeiting are often seen as legitimate income generating activities. Such developments also weaken enforcement agencies to arrest the people behind the production and distribution of counterfeit electronic products.



Socio-cultural Factors

37. The region as a whole has deprioritise IP rights. This has been attributed to lack of understanding and awareness of IP related issues. There have been specific instances where creators of artworks did not appreciate the need to register their works for copyright protection. The weak enforcement of IP rights has been attributed to the deprioritisation of IP related issues. In addition, evidence suggests numerous counterfeit electronic products find their way into the region – legally through the ports because Custom officials are unable to detect and identify such counterfeit electronic products.

38. Availability of cheap technology has also been identified as a factor. The diffusion of printing, labelling and packaging technology over the past few years have allowed counterfeiters to manufacture variety of electronic goods such as CDs and DVDs locally and copy product labels to give the counterfeit products some degree of authentic resemblance. Manufacturing of CDs and DVDs are the major cases of counterfeit electronic products produced locally. Availability of technology and emergence of downloading applications has also led to a new but popular business model for local players in the counterfeiting trade.[54]

EFFECTS OF AND THREATS POSED BY COUNTERFEITING AND IP THEFT

39. Electronic counterfeiting has serious effects on the wider economy including the financial system. The prevalence of electronic counterfeiting and IP theft in West Africa is fueling money

[54] Downloaders – an emerging group of pirates who use computer/downloading applications to make electronic copies of music tracks and sell them to patrons for a fee. These criminal operatives operate in all major cities and they provide tracks to consumers on demand. This business model is becoming a business of choice for emerging and small scale counterfeiters because it is believed to be cost effective and demand-driven. The customer provides the list of tracks requested – which may include different music collections, agree and a fee and the downloaders make them available - either on a CD, a pen drive or directly onto the customer's smart device.

laundering. Legitimate businesses are losing revenue as the practice affects the brand and profitability of businesses involved. This development also affects tax generation in the country. The phenomenon of counterfeiting and IP theft of electronic products undermines innovation and economic development and this has serious repercussions on an emerging region like West Africa. Recently, health and safety issues relative to counterfeiting of electronic products have been highlighted.

40. Counterfeiting and intellectual property thefts of electronic products are major drivers of the underground economies in West Africa with a prevalence that has extended to all consumer goods and services, including books, electrical parts, and compact discs, amongst others. According to experts, counterfeiting, piracy and IPT are some of the major consequences of global technological advancement especially in the face of digitization and miniaturization of recording and copying instruments.

41. The phenomena are therefore criminal activities that are detrimental to the economic growth of any nation as it rips many of job opportunities and significantly reduces tax revenues for the Government. They also provide avenues for the growth of the underground economy which further deters investment in production and reduces customer confidence in goods and services. This is more so as substandard products often pose health and security safety risks to unsuspecting buyers. While online counterfeits markets are increasingly becoming popular and acceptable in West Africa major cities, they continue to pose hazard to electronic-business/trading, creating more opportunities to scam consumers into thinking they are buying genuine goods at discounted prices, thereby ripping many intellectuals of the dividends of their creativity and rights.

42. In Nigeria alone, it is reported that by March 2014, over 60% of companies listed on the Manufacturers Association of Nigeria (MAN) had to close down due to counterfeiting. Those who bring in these substandard products are promoting unemployment and insecurity, which is indirectly fueling terrorism. In addition, consumers are also facing enormous challenges, including poverty and income inequality even within the same social bracket[55].

43. The report further noted that renowned electrical product supply chains, such as Leventis, Kingsway, among others, have folded up because of the influx of counterfeits. Sharp brand of electronics have suffered the worst blow in the last two decades too. The company, which produces electrical and electronic appliances while trying to consolidate its market presence in partnership with Dajcom Limited, affirmed that the brand lost its market leadership when consumers' confidence waned following the faking of its electrical and electronic products.

44. Similarly, intellectual property (IP) theft or lack of intellectual property rights (IPR) protection also discourages innovation and Foreign Direct Investments (FDIs) as investors are forced to move their business to other better structured IPR jurisdictions that can guarantee return on their investments. According to the chairman, Longman Nigeria Plc, Emmanuel Ijewere, authors and producers in the entertainment industry have been impoverished in the last 20 years, as they lost over N81 billion to counterfeiting and piracy. He explained that Nigerians spent over N90 billion in purchasing books and pirated compact discs within the period, but regretted that

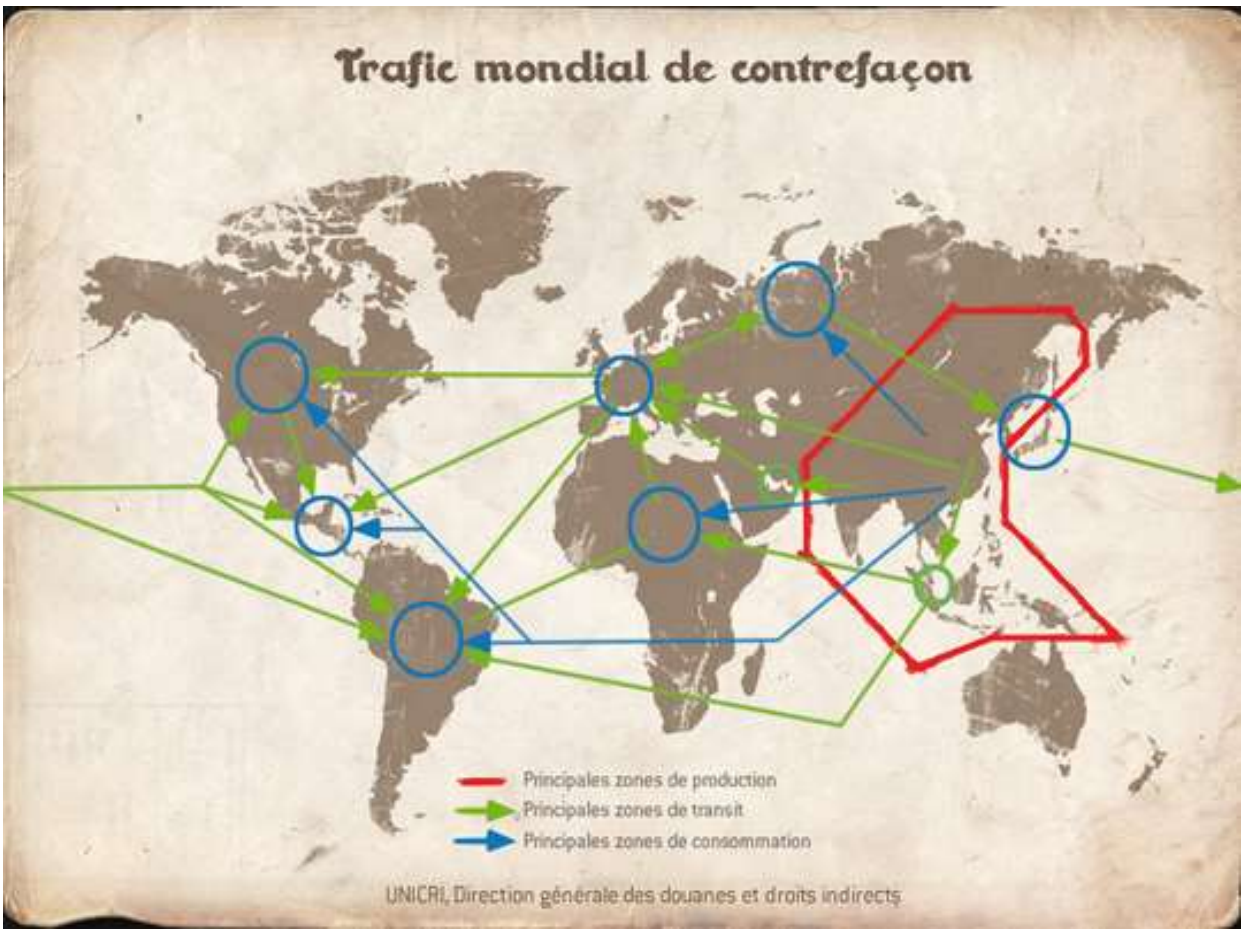
[55] http://thenationonlineng.net/checking-the-menace-of-fake-electrical-products

only N8-billion went into the coffers of the producers[56]. It has therefore become increasingly important for Governments in the region to rise to the fight against counterfeiting and ensure the protection of its citizenry's enormous innovative and creativity potentials.

VULNERABILITIES TO COUNTERFEITING AND INTELLECTUAL PROPERTY THEFT OF ELECTRONIC PRODUCTS

45. West African States finds themselves at the receiving end of the counterfeiting and IP theft vulnerability spectrum. These vulnerabilities have been brought about by large porous borders that allow the inflow of counterfeited products into the country from among themselves and Asian countries.

46. There is no gainsay in underscoring the fact that the region fast growth trajectory and home to the largest African economy is an incentive for foreign direct investments (FDI). These opportunities however attract electronic counterfeiters and right infringers from other part of the globe particularly China, Taiwan and Turkey who are ever willing to partner with fraudulent Nigerian businesses that disregard product standards for huge returns on profits.



[56] Intellectual Property Piracy and Counterfeiting in Nigeria: The Impending Economic and Social Conundrum," Waziri, K.M., Journal of Politics and Law, Vol. 4, No. 2, September 2011.

47. Similarly, many West Africans have now specialized in mass production of counterfeit goods as it brings quick and greater returns. This is because the selling price of counterfeit products are significantly lower than the market value of the original products, thus making it very attractive amongst consumers especially low income earners. While other legitimate businesses specialize in merging the counterfeit products with their legitimate stock, thereby making accounting for profits easier and legitimizing for tax purposes. For instance if a counterfeiter successfully introduces one container amongst 5 or 10 containers, chances are that he will make a successful return on his investment and secure a means of legitimizing his profits for the ultimate laundering of the proceeds.

48. Increasingly, free movement of goods and services within the Economic Community of West African States (ECOWAS) will make it difficult to police the circulation of counterfeit products in the region. Investigators have cited the free port of Lome as a source of counterfeit products into it neighbours. Nigeria has also been cited by law enforcements in neighbouring States as a source of most pirated movies into their markets. A number of Free trade zones, where electronic products are moving across borders with minimal regulation and control also add to the regional vulnerabilities regarding the counterfeiting and IP theft phenomena.

49. The fight against counterfeiting and IP related breaches is further complicated by the development of internet and technology-driven products and services. There is an emerging trend of internet-based trading in electronic products. E-commerce sites are emerging and these are becoming attractive platforms to facilitate the illicit trade. The trade in counterfeit electronic products has been facilitated by the internet recent years and is the wave of the future. The internet is expected to provide counterfeiters with opportunity to expand their sales by reaching a much larger audience/customers. Counterfeiters are also expected to use available internet technologies to brand counterfeit products to effectively deceive buyers. An emerging trend where counterfeit products are being sold alongside authentic products have been uncovered through investigations conducted as part of the study.





RESPONSE MECHANISMS

50. Although relevant statistics on counterfeit, piracy and IPT seizures and arrests indicate that the phenomena are still on the increase, West African Governments have taken practical steps to address the menace by strengthening the relevant agencies and investigative authorities responsible for countering the activities of the criminals. The Government through its judiciaries, regulatory and enforcement agencies has collaborated and intensified anti-piracy operations. This is evident in the recent successes recorded by the various government agencies as presented in the matrix below.

Country	International and regional instruments and protocols	Laws and other legal instruments	Competent authorities and agencies involve	LE Efforts (2010 - 2014) Arrest made, prosecutions convictions and seizures
Benin	• World Intellectual Property Organization (WIPO) • The Bangui Agreement of 2 March 1977 establishing the OAPI	• Law n ° 90-005 of 15 May 1990 • Law No. 2015-262 of 12 May 2002 establishing anti-piracy measures • Law No. 2005-30 of 10 April 2006 on the protection of copyright and related rights	• The National Intellectual Property Agency (ANAPI) • The Benin Bureau of Authors' Rights (BUBEDRA)	Seizures made, mostly audio-visual • 86.057 (2010) • 19.429 (2011) 44.447 (2012) • 32.836 (2013) • 20.645 (2014)
Burkina Faso	• World Intellectual Property Organization (WIPO) • African Regional Intellectual Property Organization (ARIPO)		• The National Intellectual Property Agency • Police • Customs	
Cabo Verde	• World Intellectual Property Organization (WIPO) • WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) • African Regional Intellectual Property Organization (ARIPO)		• Cape Verdean Authors' Society (SOCA) • Institute of Quality Management and Intellectual Property (IGQPI) • General Inspection of Economic Activities (IGAE)	

Country	International and regional instruments and protocols	Laws and other legal instruments	Competent authorities and agencies involve	LE Efforts (2010 - 2014) Arrest made, prosecutions convictions and seizures
			• Copyright Bureau (BUDA) • National Police • Judicial Police	
Cote d'Ivoire	• World Intellectual Property Organization • International Federation of Phonogram Industries • The International Confederation of Societies of Authors and Composers • The Bangui Agreement on African IPT • African Regional Intellectual Property Organization	• Decree 81-323 of 1981 Ivorian Copyright Office • Law No. 96-564 of 1996 on the protection of authors and producers • Inter-ministerial decree n ° 016 of 2006 on Cultural Brigade • Decree No. 2014-420 of 2014 of the National Anti-Counterfeiting Committee (NPB) • Decree No. 2015-241 of 2015 of Intellectual Property of Côte d'Ivoire • Penal Code	• Ivorian Intellectual Property Office (IIPO) • Prosecution Authority • BURIDA/ Cultural Brigade • Customs	
The Gambia	• World Intellectual Property Organisation (WIPO) • African Regional Intellectual Property Organisation (ARIPO)	• Copyright Act 2004 • Industrial Property Act 2007 CAP 95:01 • Industrial Property Regulations 2010 • Criminal Code	• National Centre for Arts and Culture (NCAC) • Registrar General Office • Police • Customs	
Ghana	•Paris Convention for the protection of industrial property •The Berne Convention •WIPO •Patent Cooperation Treaty	• Copyright Act 2005 • Patents Act 2003 • Trademarks Act 2004 • Industrial Designs Act 2003	• Copyright office • Industrial Property office • Customs • Police • Ghana Standards authority	

Country	International and regional instruments and protocols	Laws and other legal instruments	Competent authorities and agencies involve	LE Efforts (2010 - 2014) Arrest made, prosecutions convictions and seizures
	•WIPO Copyright Treaty •Madrid System on International Registration of Marks •Lusaka Agreement	• Protection Against Unfair Competition Act 2000 • Electronic Transaction Act 2008	• Economic & Organized Crime Office • FIC • Immigration • Registrar General Department	
Guinea	• World Intellectual Property Organisation (WIPO) • African Regional Intellectual Property Organisation (ARIPO)		• The National Intellectual Property Agency • Police • Customs • FIU	
Guinea Bissau	•World Intellectual Property Organization •African Intellectual Property Organization (OAPI), established by the Bangui Agreement of March 2, 1977, to protect intellectual property	• Decree-Law no. 46 980, of April 27, 1966 (Copyright Code). • Law n.1 / 73, of September 24, 1973 • Penal code	• Guinean Author Society –SGA • Copyright Office set up under the Directorate-General for Culture • Judiciary Police	
Liberia	•World Intellectual Property Organization •WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) • African Regional Intellectual Property Organization	• Liberia Intellectual Property Act of 2014 • New Penal Law of Liberia, Title 26, Liberian Codes Revised (LCR)	• Liberia National Police • The Intellectual Property Right Secretariat • FIU • Customs	
Mali	• World Intellectual Property Organization (WIPO) • Bangui Agreement of 2 March 1997 establishing an	•Law No. 08-24 of July 23, 2008, establishing the regime of literary and artistic property in the Republic of Mali •The Customs Code	•The Malian Copyright Office (BMDA) •Malian Center for the Promotion of Industrial Property (CEMAPI);	

Country	International and regional instruments and protocols	Laws and other legal instruments	Competent authorities and agencies involve	LE Efforts (2010 - 2014) Arrest made, prosecutions convictions and seizures
	African Intellectual Property Organization	•The Penal Code	•Economic cluster Courts •General Directorate of Customs; •National Directorate for Trade and Competition; •The CENTIF	
Niger	• International Federation of Inventors' Associations (IFIA) • The Berne Convention of 1886 for the Protection of Literary and Artistic Works		• The National Intellectual Property Agency • Police • Customs • FIU	
Nigeria	• World Intellectual Property Organization (WIPO) • WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) • ICC Business Action to Stop Counterfeiting and Piracy (BASCAP) • African Regional Intellectual Property Organization (ARIPO)	• Patents and Designs Act Cap P2 Laws of the Federation of Nigeria 2004 • Trade Marks Act, Cap T13 Laws of the Federation of Nigeria 2004	• Nigerian Copyright Commission • Standards Organization of Nigeria • National Office for Technology Acquisition and Promotion • Intellectual Property Lawyers Association of Nigeria • Anti-Counterfeiting Collaboration • Copyright Society of Nigeria	• 6,081,384 seizures made • 443 arrests so far • 53 convictions obtained
Senegal	• Bangui Agreement on the protection of IPT • The Berne Convention of 1886 for the Protection of Literary and Artistic Works	• Law No. 2008-09 on copyright and neighboring rights • Law No 2014-10 of the Customs Code • Penal Code	• Senegalese Copyright Office • Anti-Counterfeiting Brigade • Economic Control Service • Customs	• 66,872 seizures made so far • More than 100 convictions were

Country	International and regional instruments and protocols	Laws and other legal instruments	Competent authorities and agencies involve	LE Efforts (2010 - 2014) Arrest made, prosecutions convictions and seizures
	• The Rome Convention for the Protection of Performers and Producers • The WIPO Internet Treaties adopted in 1996 • African Regional Intellectual Property Organization			obtained, mostly on violation of the copyrights of audiovisual and literary works.
Sierra Leone	• World Intellectual Property Organization (WIPO) • WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) • African Regional Intellectual Property Organization (ARIPO)	• The Copyright Act, 2011 • The Patents and Industrial Design Act, 2012	• Attorney General Office • Administrator and Registrar General Office • Collection Board for IP/Copyright Owners • Customs • Police	
Togo	• World Intellectual Property Organization • The Bangui Agreement on African IPT • African Regional Intellectual Property Organization		• The National Intellectual Property Agency • Police Customs	

TYPOLOGIES AND CASE STUDIES

51. The typologies presented herein flows from the case studies from member States for the project. They manifest the techniques used and methods adopted by IP thieves and counterfeiters in West Africa. The three categories of typologies are:

a. Infringement of IP right and domestic reproduction of literary work;

b. Unauthorized and illegal agents/strawmen or the fraudulent representation of IP owners; and

c. Importation of infringed literary work from abroad.

52. The techniques and methods used in the most of the cases presented have to do with transactions ranges from cash intensive businesses; money service businesses, 'hawala'; cash courier – self courier; front companies, comingling of funds; and false documents.

TYPOLOGY 1: INFRINGEMENT OF IP RIGHT AND DOMESTIC REPRODUCTION OF LITERARY WORK

Case 1: IP Theft of Literary Work (Textbook)
In 2011, Mr. A, a staff of XYZ R&D Centre coincidentally came across Mr. B reproducing large quantities of XYZ textbooks. Mr. A immediately alerted the Agency N (enforcement agency) who responded and arrested Mr. B. Upon interrogation, Mr. B claimed that the order was made by a Mrs. R of XYZ through a Mr. S. Mrs. R was arrested by Agency N operatives and on interrogation revealed that a Mr. BIG a businessman in Abuja requested for 2,500 copies of XYZ textbooks which was out of stock at the time of the request, so she contracted Mr. B to produce 2,000 copies of the said textbooks at N170 per copy amounting to N340,000. Mrs. R then offered the reproduced books to Mr. BIG at N350 per copy amounting to N700,000. Mrs. R informed that Mr. BIG made a bank deposit of N650,000 to her account while the balance of N50,000 was to be paid upon delivery. Mrs. R revealed that she used the money to pay her rent. The actual cost of the B&D Centre book is N475 per copy. Mrs. R was charged to court by Agency N and the case is still under prosecution. *Source: Nigeria*

Case 2: IP Theft of Literary Work (Optical Disc)
In 2014, based on a petition written by one Mr A. alleging that his literary work has been illegally replicated, the authorities conducted a raid on the location. Upon interrogation of the owner of the distribution point, he revealed that he purchased the CDs from company X, who is an approved and licensed CD manufacturer in Nigeria. He then claimed that they received letter of authority for the reproduction of the CDs. However, investigation revealed that the alleged letter was forged. Investigation further revealed that 5,000 (five thousand) counterfeit copies of Mr. A literary work had actually been reproduced valued at about N750, 000. Company X claimed to have been given the job order from another company that claims to have contact with the copyright owner. In order to fulfill this illegal order, Company X used a dedicated manufacturing line with unapproved manufacturer's and IFPI code which is separate from the one approved by the

regulator. This is in order to avoid tracing of the product to the company. Company X did not verify the letter of authority or whether the clients have the copyright authority. Company X further protected themselves from the implication of their actions by making the client to sign a letter of indemnity, absolving it from any issues resulting from the production.
Source: Nigeria

Case 3: IP Theft of Literary Work (Software)

In 2009, a petition was received from representatives of an international software company, alleging that some companies were infringing on the rights of their client by offering for sale unauthorized copies of their software product. The suspected companies specialize in assembling computers and they will install the unauthorized software on the assembled computers. They also sell the software to other end users, who upon activation will be prompted that the software they bought is not authorized.
The authority then carried out anti-piracy operations which included a test buy at the premises of the suspected companies and some copies of the unauthorized products were recovered. These were tested and found to be pirated while upon interrogation, the suspect admitted they actually loaded the pirated software on assembled or fairly used computer systems which they then sell to the public, and blamed the unavailability of the software as the reason for their action. The prosecution is on-going
Source: Nigeria

Case 4: IP Theft of Literary Work (Textbook)

Series of petitions were received by the NCC on alleged possession and sales of pirated copies of literary works on foreign and local authors by a bookshop operator. Following the complaint, a test purchase was conducted on suspected titles and upon establishment of the pirated materials, an anti-piracy raid was carried out at the store and huge volumes of alleged pirated works worth 25 million Naira were seized. The case is still being prosecuted
Source: Nigeria

Case 5: IP Theft of Literary Work (Movies and Music)

Following investigations by law enforcement, it happens that two counterfeiters, KF and MB were responsible for supplying pirated movies and music at wholesale in the Adjame market. The proceeds from the piracy is then reinvested in the real estate sector, by buying and selling of unfinished structures and land plots, as well as providing sand truck services. They also construct their own buildings which they lease out. The case is still being investigated

Source: Cote d'Ivoire

TYPOLOGY 2: UNAUTHORISED AND ILLEGAL AGENTS / STRAWMEN OR THE FRAUDULENT REPRESENTATION OF IP OWNERS

Case 6: Illegal collection of royalties for IP owners

In 2012, based on a petition written by one CSC Society, it was alleged that Company V is an illegal collective management organization in the musical genre. The company fronts as an Agent of Intellectual Property owners and collecting royalties from commercial centers on their behalf, claiming it has contracts with them to that effect. This is the sole responsibility of a particular company. The company writes to different organizations, hotels, telecom companies and airlines, asking for payments for the use of musical works it claims to have under its repertoire, including local and international artistes. The unsuspecting companies will then make payments and fake licenses will be issued to them.

Upon search of the premises of Company V, copies of cheques received from different companies that have fallen prey were discovered, while there were no evidences of remittance to the actual intellectual property owners they claim to represent. It was found that the company has already defrauded about 17 million Naira. The prosecution is on progress.

Source: Nigeria

Case 7: Illegal transmission of broadcast signals

Following a complaint by a Cable Network Provider PDR on unauthorized commercial reproduction and retransmission of its signals; the Nigerian Copy Right Commission (NCC) dispatched a 4-man team of operatives who stormed the Wuse 2 and Utako District offices of the illegal broadcasters. Investigations revealed that the broadcasters charged a monthly subscription fee of N2, 000. The infringing contrivances recovered during the raid were valued at N1.5 Million. The investigation is on-going.

Source: Nigeria

Case 8: Illegal rental of counterfeit movies

In February, 2012, the Enforcement Unit of the Copyright Office had a tipoff that a young in a suburb of Accra was engaged in duplication and rentals of audio-visual works at a fee of GH₵1.00 per movie. Based on the information, surveillance was conducted and his place of abode was located. He was arrested together with an HP Desktop computer and a large number of audio-visual works – both original and duplicated ones. During investigations, he admitted the offence. The suspect was then prosecuted and pleaded guilty to both offences and he was subsequently convicted on his own plea of a fine GH₵600 and in default, to an 18 month jail term.

Source: Ghana

Case 9: Illegal redistribution of TV signals

In June, 2015, law enforcement had intelligence that an unauthorized redistribution of TV signals is taking place in the suburbs of Dakar for monthly subscription fee of 3,000 FCFA. Upon surveillance, the investigation team uncover various transmitting equipment including decoders. Further investigation prove that the suspects were about to get license for their own TV company where they have been investing the proceeds from illegal activities. Arrest were made and investigation is on-going.

Source: Senegal

TYPOLOGY 3: IMPORTATION OF INFRINGED LITERARY WORK FROM ABROAD

Case 10: Importation of pirated literary materials
In July, 2015, the NCC in collaboration with the NCS and Nigerian Publishers Association jointly examined a container at AP Moller Terminal Apapa, Lagos suspected to be carrying pirated literary works. Inspection of the container revealed about 30,000 copies of pirated literary works worth about N70 million Naira as suspected. The container is said to be imported from china and investigation is on-going. *Source: Nigeria*

Case 11: Importation of pirated literary works
The NCC received intelligence from a reliable right owner's association on shipment of suspected pirated literary works. Upon a joint interception and investigation by the NCC and NCS, it was discovered that the suspected 40-feet container were filled with literary titles valued at N40 million Naira. Amongst the materials seized at the Terminal in Lagos were titles by prominent publishing firms. The container is said to be imported from china. However nobody was arrested as the imposter went underground and as such, no case was initiated but investigation was initiated. *Source: Nigeria*

Case 12: Importation of pirated audio-visual work
Pursuant to a complaint made to the NCC by the Nigerian music industry coalition on an alleged case of right infringement being investigated by the Nigerian Police Force, the NCC requested for the transfer of the said case from the NPF for proper investigation and prosecution where necessary. The case was initially received by the Nigerian Police Force from a right owner on alleged unauthorized importation of his sound recordings (musical) and cinematography (films). A search conducted on the premises of the suspect by the police revealed various categories of sound and cinematography works suspected to be pirated. The materials were seized and suspected was charged to court. Investigation also established that the suspect invests his proceeds in real estate which could not be traced physically. The case is still undergoing prosecution. *Source: Nigeria*

Case 13: Importation of counterfeit computer accessories
On March 14, 2015, a Kenyan and employee of Haliday Finch Company Limited, Kenya, working as Intellectual Rights Enforcement and Market Surveillance Officer complained to the police that a survey in the markets of Accra revealed that counterfeit HP products particularly HP tonners and inkjets were on sale in shops. Police investigations led to the arrest of two Lebanese Nationals who operate their own legally registered computer companies, retailing electronics and computer accessories. Quantities of the counterfeit HP tonners and Inkjets were taken into custody and arrested. It was found that, the counterfeit products were imported from China but their route of entry could not be established. It was also found that, the products are sold together with other genuine electronic products. Prosecution is on-going *Source: Ghana*



Case 14: Importation of counterfeit literary materials

On February 2013, the Ivorian Customs received an anonymous tip that several tons of school books, produced locally by three publishing companies H, N and C, have just been discharged from containers in the port of Abidjan. The information stated that the goods were declared as inputs for the manufacture of school notebooks. Upon receiving the information, an investigation team identified the two containers at the dock. The team found out that the shipment is from India and is under the name of Publisher N. However, further investigation revealed that a bank account associated with the import is domiciled in a local commercial bank under a different name, NETI, which is not Publisher N. Further investigation revealed that a deposit of 450 million FCFA was made into that account and was withdrawn in two months. The investigation revealed that the account was opened using faked documents. Upon inspecting the containers, it was found out that the items are textbooks of Publisher N and not the exercise book materials as declared, weighing 37 .73 tons. The suspect however went underground and the containers were seize.

Source: Cote d'Ivoire

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

SUMMARY OF FINDINGS AND CONCLUSION

53. Analysis from the study reveal a number of findings relative to the production and distribution of electronic products, counterfeiting and IP theft on the one hand, and ML arising from the above phenomenon.

54. The most interesting findings of the study is lack of knowledge and awareness on counterfeiting and IP right issues of electronic products among stakeholders including both investigative and enforcement agencies. There is generally very low level of awareness of IP among industry players, the informal sectors and government institutions. The study has revealed that most stakeholders in Ghana do not understand what constitutes Electronic Counterfeiting and the area has largely been ignored by policymakers. For examples, Customs officials are unable to detect counterfeit electronic products from genuine ones.

55. The study has established that even where there is understanding of the counterfeiting and IP Theft phenomena, policymakers, regulatory bodies, as well as investigative and enforcement agencies identified in this report did no attempt to make the ML/TF connection on cases investigated and or prosecuted. Evidence suggests investigative agencies like the police normally disregard the ML issues when investigating IP right infringements. The Police for instance are mostly unable to look into the specific ML/TF issues including transaction tracing and how the criminals channel proceeds from counterfeiting and IP theft related activities into the financial system. Our analysis suggest lack of understanding and resource constrains largely contribute to this.

56. Evidence suggest the IP administration and enforcement is very weak in the region. Several factors account for this - including human resource constraints – poor staffing level, logistical challenges, lenient punishment for IP right infringements, lack of political will on IP rights enforcement and corruption among others.

57. Weak enforcement of IP rights has been attributed to weak institutional and legal framework. Legislations governing IP rights enforcement are found in various IP laws. There are also different institutions involved in IP enforcement and the coordination among these institutions have been a challenge. Measures at the country's borders to detect and prevent the importation of counterfeit electronic products are not effective enough. As already identified, enforcement officials are not adequately conversant with IP issues and there are no coordinated programmes designed for consumer and public education to support enforcement.

58. The study has established that most counterfeit electronic products circulating in the market were imported from China. Further investigations suggest most of these counterfeit products were imported through official channel into the country. Thus, evidence suggests a significant proportion of counterfeit electronic products are imported through official channel into the country. Enforcement becomes very difficult when these goods find their way through the legal channels into the market.

59. One of the major issues affecting enforcement of IP related rights is the inability of enforcement officials to identify counterfeit products in the market. Many indigenous companies and patent owners do not employ easily identifiable and authentication labels on their products. In some cases, counterfeit products are better packaged than authentic products.

60. Poor Government & Industry Collaboration – Evidence suggest state institutions mandated to address IP related issues cannot police the production and distribution of electronic products in the market without the involvement of the IP industry which is an interested party. Lack of collaboration between IP administration and enforcement institutions and the private sector has been a major factor affecting effective administration and enforcement of IP rights.

RECOMMENDATIONS

61. The research has identified the following key recommendations that require attention of policy makers and relevant stakeholders:

62. The legal and regulatory framework provides the parameters within which enforcement of IP related breaches can be pursued. It is important that the legal framework provides for a prompt and severe sanctions to deter people from engaging in counterfeiting and piracy. The counterfeit and IP Act should be revised to emphasize the inclusion of charges against suspect of these crimes

63. Fighting the circulation of counterfeit electronic products requires awareness creation across all sectors. It is important for state institutions, the public and rights holders to be aware of the counterfeiting and piracy problem and also to appreciate their roles in combating the problem. The public at large will appreciate the issues better if they understand the effects of patronizing counterfeit products especially on health and safety risks as well as its damaging effects on the economy. There is also the need to understand the phenomena better in order to inform government and stakeholders on policies. Development of information on the phenomena through surveys and sector specific studies is therefore recommended as part of awareness creation programmes. High profile domestic campaigns involving major stakeholders aimed at countering counterfeiting and piracy is also recommended.

64. An important recommendation to address the phenomenon of EC and IP theft is to train and build capacity of institutions with both direct and indirect responsibilities on IP administration and enforcement. Training for copyright administration officials, customs and law enforcement officers is an important element in combatting counterfeiting and IP rights infringements. Training programmes should be designed not only to create awareness among these key stakeholders but also to enhance their investigative, prosecutions and enforcement skills to combat the phenomena.

65. The report has identified several weaknesses including human resources, technical and logistical challenges. Stakeholders such as WIPO, BASCAP[57] and other international bodies as

[57] BASCAP – The Business Alliance to Stop Counterfeiting and Piracy. The Alliance was launched in early 2005 under the auspices of the International Chamber of Commerce. It is one of the more recent and comprehensive global initiatives launched by industry. It seeks to bring organizations together to pursue a more unified

well as multinational technology corporations whose brands and patents are being exploited by counterfeiters should provide technical assistance in the form of knowledge and technology transfer, sharing of best practices and other intervention mechanisms in order to develop these institutions to combat piracy and counterfeiting electronic products.

66. Setting up of Interagency Working Group for Effective Coordination – The report has identified a number of agencies – lead agencies and supporting agencies that are involved in IP administration and enforcement. Effective coordination, currently lacking, however appears to be the key to strengthening administration and enforcement of IP rights. In order to effectively coordinate IP related initiatives, the setting up of interagency working group on IP rights protection especially in the area of electronic counterfeiting is recommended.

67. Government co-operation with industry is essential to combat counterfeiting and IP rights protection. Industry mainly comprises of right holders who have the technical expertise to distinguish counterfeits from original products. In addition, some industry players track and pick intelligence especially on sales and distribution channels of counterfeit products. As a result, continuous collaboration between government – through IP administration and enforcement agencies and right owners is recommended to combat the phenomenon. Industry stakeholders should also develop active interests through specific initiatives aimed at supporting the government to deal with the problem. Electronic products especially those produced locally should meet certain standards to make it harder for pirates and counterfeiters to copy. Industry should also take innovative steps to improve patent quality which significantly increases legal certainty of their products. In addition some authentication technologies such as the use of an App by consumers to authenticate a product purchased can be adopted.

68. Counterfeiting is a global problem that requires a coordinated global response. Even though evidence suggests that most of West Africa member States are signatory to major international treaties, it appears the countries have not fully exploited the benefits associated with such treaties to address piracy and electronic counterfeiting. Increasingly, bilateral and regional level agreements on joint actions against electronic counterfeiting and the protection of IP rights is being pursued. A joint ECOWAS action against counterfeiting and IP theft is recommended to track and deal with the production and distribution of counterfeit electronic products in the region. This initiative can be very effectively implemented with industry support.

approach to combating counterfeiting and piracy. Its efforts include the creation of platforms for exchanging information on counterfeiting and piracy.

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Appendix I

INTER-GOVERNMENTAL ACTION GROUP AGAINST MONEY LAUNDERING IN WEST AFRICA (GIABA)

DRAFT QUESTIONNAIRE

This questionnaire has been drafted in accordance with the objectives of the typologies project, as contained in the proposal, as well as the research questions which will guide the project. The primary objective of the questionnaire is to gauge the extent of electronic counterfeiting and IP theft, determine the types of electronic products most counterfeited and the types of IPs most stolen for commercial purposes, the sources of counterfeited products – whether imported or domestically produced, among others.

Institution	
Address and full contacts of institution	
Name of the person(s) responsible for completing this questionnaire	
Date of completion	

PART I

QUESTIONS FOR POLICYMAKERS				
SN	**QUESTION**	**ANSWER**		**REMARKS/ COMMENTS**
1.	What percentage of your country's GDP is contributed by economic activities related to production, distribution, and sale of electronic products?			
2.	What is the annual cash value of trade in electronic products in your country?	1. 2010		
		2. 2011		
		3. 2012		
		4. 2013		

		5. 2014		
6.	What are the main types of electronic products distributed and sold in your country? Please rank them according to their prevalence			
7.	What is the predominant source of electronic products in your country?	• Imports? • Domestic production? • Both in equal measure?		
8.	What is the quantum of electronic products imported into your annually?	1. 2010		
		2. 2011		
		3. 2012		
		4. 2013		
		5. 2014		
6.	What is the quantum of electronic products produced domestically per annum?	1. 2010		
		2. 2011		
		3. 2012		
		4. 2013		
		5. 2014		
7.	What is the cash value of electronic products imported annually?	1. 2010		
		2. 2011		
		3. 2012		
		4. 2013		
		5. 2014		
8.	What is the cash value of electronic products produced domestically?	1. 2010		
		2. 2011		
		3. 2012		
		4. 2013		
		5. 2014		

9.	What are the predominant types of electronic products most imported? Please rank them		
10.	What are the predominant types of electronic products produced domestically? Please rank them		
11.	Does your country have laws that regulate the activities (production/import, distribution, sale, etc.) related electronic products? If so, please name them.		
12.	What do you consider as weaknesses in the laws regulating activities related electronic counterfeiting and IP theft?		
13.	Are there any regulations and guidelines for monitoring compliance with existing laws? If so, please name them		
14.	Which institutions are responsible for regulating and supervising activities related to electronic products?		
15.	Which are the lead institutions and which are the supporting institutions?		
16.	What is the level of adequacy or otherwise of human, logistical, and financial resources of such institutions?		
17.	Are there any self-regulatory bodies on activities related to electronic products and IP rights? If so, list them		
18.	Are there frameworks for international cooperation against electronic counterfeiting and IP theft? If so, please list and explain them		

PART II

QUESTIONS FOR INVESTIGATIVE AND ENFORCEMENT INSTITUTIONS			
SN	**QUESTION**	**ANSWER**	**REMARKS/COMMENTS**
1.	What are the predominant types of counterfeited electronic products in your country? Please rank them		
2.	What are the predominant types of IPs stolen in your country? Please rank them		
3.	What are the predominant types of counterfeited electronic products sold in your country? Please rank them		
4.	What are the predominant types of IPs stolen sold in your country? Please rank them		
5.	What is the predominant source of counterfeit electronic products distributed in your country?	• Imports? • Domestic production?	
6.	What is the predominant source of stolen IPs?	• Internet? • Directly from original copies? • Others?	
7.	What is the quantum of counterfeited electronic products seized in your country annually?	1. 2010 2. 2011 3. 2012 4. 2013 5. 2014	
8.	What is the overall cash value of counterfeited electronic products seized in the last 5 years?		
9.	How many cases of electronic counterfeiting have been investigated and/or prosecuted in the last 5 years?	1. 2010 2. 2011 3. 2012	

		4. 2013		
		5. 2014		
10.	How many cases of electronic counterfeiting have resulted in a conviction in the last 5 years?	1. 2010		
		2. 2011		
		3. 2012		
		4. 2013		
		5. 2014		
11.	How many cases of IP theft have been investigated and/or prosecuted in the last 5 years?	1. 2010		
		2. 2011		
		3. 2012 4. 2013		
		5. 2014		
12.	How many cases of IP theft have resulted in a conviction in the last 5 years?	1. 2010		
		2. 2011		
		3. 2012		
		4. 2013		
		5. 2014		
13.	What is the value of the largest electronic counterfeiting case investigated in the last 5 years?	1. 2010		
		2. 2011		
		3. 2012		
		4. 2013		
		5. 2014		
6.	Please list the types of people involved in the cases of electronic counterfeiting and IP theft			
7.	How many of the cases in the last 5 years involved international cooperation?			

PART III

QUESTIONS FOR INVESTIGATIVE AND ENFORCEMENT INSTITUTIONS RELATED TO MONEY LAUNDERING				
SN	**QUESTION**	**ANSWER/ SELECTION**		**REMARKS/COMMENTS**
1.	How many ML cases related to electronic counterfeiting have been investigated in the past 5 years?			
2.	How many ML cases related to IP theft have been investigated in the past 5 years?			
3.	What were the sources of information for the initiation of ML investigations? Please rank them			
4.	What is the value of the largest ML case involving electronic counterfeiting and/or IP theft in the last 5 years?			
5.	How many ML cases arising from electronic counterfeiting and IP theft involved international cooperation?			

Appendix 2

INTER-GOVERNMENTAL ACTION GROUP AGAINST MONEY LAUNDERING IN WEST AFRICA (GIABA)

CASE ANALYSIS FORMS FOR TYPOLOGIES PROJECT ON MONEY LAUNDERING ARISING FROM ELECTRONIC COUNTERFEITING AND INTELLECTUAL PROPERTY (IP) THEFT IN WEST AFRICA

Name of Country_____ Case No._____

a. **Brief Facts of the case (including what prompted the commencement of the investigation and status of the case as at the date of reporting):**

b. **Techniques/methods**

Please indicate with the case example the occurrence of any of the following techniques/methods/schemes and use of any instruments listed:

B1. Corruption: Please, report the incidences of corruption related to this case, if any (bribery/attempted bribery of officials, third parties, possible influence by politically exposed persons (PEPs) to influence investigating officials or private sector compliance staff in banks being bribed or influenced to allow electronic counterfeiting and IP theft related money laundering to take place

B2. Cash couriers / currency smuggling: concealed movement of money suspected to have been derived from electronic counterfeiting and IP theft thereby avoiding transaction / cash reporting measures.

B3. Structuring (smurfing): numerous transactions involving proceeds from electronic counterfeiting and IP theft (deposits, withdrawals, transfers) high volumes of small transactions and sometimes numerous accounts to avoid detection threshold reporting obligations

B4. Purchase of valuable commodities (gems, precious metals etc): Use of proceeds from electronic counterfeiting and IP theft to purchase instruments to conceal true ownership or move value without detection

B5. Purchase of valuable assets (landed properties/real estate, vehicles, etc): Investment of proceeds of electronic counterfeiting and IP theft in high-value negotiable goods t to cove up the criminal source of the proceeds.

B6. Trade-based money laundering and terrorist financing: Manipulation of invoice and use of trade finance routes and commodities to launder the proceeds of electronic counterfeiting and IP theft

B7. Wire transfers: Transfer of proceeds of electronic counterfeiting and IP theft electronically between financial institutions from outside of the country or from the country to another country

B8. Investment in capital markets: Incidence of trying to cover up the source of proceeds of electronic counterfeiting and IP theft through investment in the capital market and other negotiable instruments

B9. Business investment: The mingling of the proceeds of electronic counterfeiting and IP theft with legitimate business monies in order to cover up the source of the funds.

B10. Alternative remittance money services: The use of informal money service mechanisms to transfer of receive the proceeds of electronic counterfeiting and IP theft

B11. Use of nominees, trusts, family members or third parties etc: Transfer of proceeds of electronic counterfeiting and IP theft to nominees, trust, family members or third parties by drug traffickers to protect their identities and/or for safe keeping/laundering.

B12. Use of DNFBPs: The use of professionals such as accountants, real estate agents, lawyers, etc.

B13. Use of debit cards, credit cards, other payment cards, cheques, promisory notes etc: The use of cards, cheques, promissory notes for receive/make payment or laundering of proceeds of electronic counterfeiting and IP theft within national jurisdiction or to another jurisdiction.

B14. Currency exchanges / cash conversion: use of the formal or informal currency exchange system to launder/transfer the proceeds of electronic counterfeiting and IP theft

B15. Commodity exchanges (barter): Direct exchange of commodities (legal or illegal) in order to conceal the origin of value being electronic counterfeiting and IP theft

B16. Gaming activities (casinos, gambling etc): Use of proceeds of electronic counterfeiting and IP theft to for example buy winning tickets from legitimate players; using casino chips as currency for criminal transactions; using online gambling to obscure the source of criminal proceeds.

B17. Abuse of non-profit organizations (NPOs): use of NPOs to transfer proceeds of electronic counterfeiting and IP theft in or out of the country

B18. Use of shell companies/corporations: Incidences of use of shell companies to cover up the identity of persons involved in electronic counterfeiting and IP theft

B19. Use of foreign bank accounts: Movement of proceeds of electronic counterfeiting and IP theft from point of high vigilance to a point of low vigilance (in or out of country)

B20. Identity fraud / false identification: use of false identity by persons involved in the case of electronic counterfeiting and IP theft to obscure identification of those involved in many methods of money laundering (if possible, provide some information as to how they obtained the false identity – corruption, intimidation, financiers, etc)

B21. Please, summarise the outcome of prosecution of the case

B22. Please, provide any additional information on any technique/method not adequately covered above.

****